

REMARKS

Claims 5, 12, 15, 16, 19, 21-23 and 25-102 have been canceled.

New claims 103-109 are presented for the Examiner's consideration. New claims 103-105 are claims 2-4, with the added limitations of claim 18. Basis is provided by claims 2-4 and claim 18. New claims 106-109 are claims 1-4, with the added limitations of claim 18, but without water. Basis is the same as for new claims 103-105 and page 31, line 24, to page 32, line 2, which indicates the treatment gas can be applied directly for both water breathing and air breathing animals.

Claims 1 to 4 have been amended to incorporate the limitation that the process is carried out with partially purified smoke, without water, so that the membranes of the animal act to super purify the smoke to prevent smoke flavor from being imparted to the meat. Basis is provided by page 16, lines 17-20, page 31, line 24, to page 32, line 2 (see above), and original claim 18.

Claim 18 has been rewritten in independent form.

The August 24, 2004, office action rejected claims 1-11, 14, 17, 20, 24, 25, 29 and 82 as anticipated by Iimura; rejected claims 13, 36, 37 and 41-55 as obvious over Iimura in view of Ishwata [sic – Iwashita]; rejected claims 28, 30-32, 39, 40, 59-79, 81, and 84-89 as obvious over Iimura, Ishwata [sic – Iwashita] and Holeton; rejected claim 18 as obvious over Iimura in view of Kowalski; rejected 93, 94, 95, 96, 99, 100, and 102 as obvious over Iimura in view of Woodruff; and rejected claims 97, 98, 101 as obvious over Iimura, Woodruff and Kowalski.

MPEP 707.05(a) states that "Copies of cited references (except as noted below) [exceptions not relevant here] are automatically furnished without charge to applicant together

Application No. 09/932,622
Amendment Dated February 24, 2005
Reply to Office Action of August 24, 2004

with the Office action in which they are cited.” However, the office action did not include a copy of Iimura, but instead only contained an English language Derwent Abstract of Iimura. Although paragraph 5, line 1, paragraph 8, line 3, paragraph 12, line 3, and paragraph 23, line 4, of the office action all refer to the Abstract of Iimura, paragraphs 20, 21, 28 and 29 do not. 37 CFR 10104(d)(1) requires that “In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon will be identified.”

Applicant has obtained a copy of the complete Japanese specification of Iimura and a certified English translation thereof, and they are enclosed for the Examiner’s consideration.

The rejection of claims 1-4, 6-11, 14, 17, 20, and 24 as anticipated by Iimura must be withdrawn (claims 5 and 25-102 have been canceled above). Claims 1-4, 6-11, 14, 17, 20 and 24 have all been amended to include a limitation to some kind of smoke. As noted in paragraph 29 of the office action, Iimura is silent in teaching smoke, so it cannot anticipate these claims, as amended above.

The rejection of claim 18 as obvious over Iimura and Kowalski must be withdrawn. First, the combination of Iimura and Kowalski does not meet, teach, or even remotely suggest using the membranes of an animal to super-purify smoke to prevent smoke flavor from being imparted to meat.

Second, even if the combination of Iimura and Kowalski met the limitation of using the membranes of an animal to super-purify smoke and prevent imparting smoke flavor, combining Iimura and Kowalski would destroy the function of Iimura. Iimura is directed to making the color of the meat bright red, brighter than untreated meat, and to maintain that unnaturally bright color even after the meat is many days old. Page 3, third to last paragraph, last sentence, of

Application No. 09/932,622
Amendment Dated February 24, 2005
Reply to Office Action of August 24, 2004

Imura states “The color will not change to brown even when the fish is left in the air for several days.” Page 4, third paragraph, second sentence, states that “That raw meat was brighter red than the raw meat of a rabbit that was not made to inhale carbon monoxide.” Page 4, second paragraph, last sentence, of Imura states “Moreover, when that raw meat was stored in a refrigerator at 0°C-3°C, the color did not change to brown even after fourteen (14) days.” Page 4, last paragraph, last sentence, of Imura states “Even after twenty (20) days had passed in a refrigerator at a temperature of 0°C-5°C, hardly any color change was noted.”

By contrast, Kowalski is directed to a process to preserve (not enhance or alter) the appearance of the meat and to allow natural decomposition after thawing. Column 3, lines 60-63, of US Patent 5,972,401 to Kowalski states that the goal of Kowalski is to “achieve a similar look to fresh seafood after the seafood is frozen and thawed.” Column 4, lines 14-17, and column 22, lines 37-45, of Kowalski teach that Kowalski’s process results in a product that undergoes normal decomposition after thawing. Page 5, first paragraph, last sentence, of Imura states that “taste, smell, and other food product quality attributes were not found to have been compromised at all”, but it is not stated how long the fish meat had been thawed after freezing (or maintenance at 0°C - 5°C).

Moreover, even if Imura and Kowalski met the limitation of using an animal’s membranes to super-purify smoke, there is no teaching, suggestion or incentive to combine Imura and Kowalski, so that their combination is impermissible hindsight reconstruction.

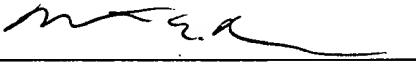
Accordingly, because the rejection of claim 18 must be withdrawn, the limitations in claim 18 to using gas derived from raw smoke and using the animal’s membranes to super-purify the smoke and prevent smoke flavor from being imparted to the meat are patentably distinguishing over the prior art.

Application No. 09/932,622
Amendment Dated February 24, 2005
Reply to Office Action of August 24, 2004

In view of the above, it is respectfully submitted that the claims are now in condition for allowance. Allowance of the claims at an early date is earnestly solicited. If the claims would be in condition for allowance except for minor revisions, Applicant's attorney courteously invites a telephone interview initiated by the Examiner so that such revisions can be effected by Examiner's amendment.

Respectfully submitted,

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